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(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary may waive the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than \$99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a "metropolitan statistical area" as defined by the Office of Management and Budget and who are unserved by other postsecondary institutions; or

(5) The institution will, if granted the waiver, substantially increase the higher education opportunities for Hispanic Americans.

(c) For the purpose of paragraph (b) of this section, the Secretary considers "low-income" to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants of the low-income figures through a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 606.2(a)(2), an applicant insti-

tution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student in that year of comparable institutions that offer similar instruction.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average educational and general expenditure per full-time equivalent undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate educational and general expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

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(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.5 How does an institution apply to be designated an eligible institution?

(a) An institution applies to the Secretary to be designated an eligible institution under this part by first submitting an application to the Secretary in the form, manner, and time established by the Secretary. The application must contain—

(1) The information necessary for the Secretary to determine whether the institution satisfies the requirements of §§ 606.2, 606.3(a), and 606.4(a);

(2) Any waiver request under §§ 606.3(b) and 606.4(c); and

(3) Information or explanations justifying any requested waiver.

(b) An institution that wishes to receive a grant under this part must submit, as part of its application for that grant, an assurance that when it submits its application—

(1) Its enrollment of undergraduate full-time equivalent students is at least 25 percent Hispanic students; and

(2) Not less than 50 percent of its Hispanic students are low-income individuals.

(Authority: 20 U.S.C. 1101a and 1103)

§ 606.6 What regulations apply?

The following regulations apply to the Developing Hispanic-Serving Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications for cooperative arrangements.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 606.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.7 What definitions apply?

(a) *Definitions in EDGAR.* The terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project period
Public
Secretary
State

(b) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Activity means an action that is incorporated into an implementation plan designed to meet one or more objectives. An activity is a part of a project and has its own budget that is approved to carry out the objectives of that subpart.

Base year means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

Branch campus means a unit of a college or university that is geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—